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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,327	02/26/2002	John M. Garth	SVL920010089US1 0920.0018	3782
23373	7590	03/21/2005	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			RAYYAN, SUSAN F	
			ART UNIT	PAPER NUMBER
			2167	

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/082,327	GARTH ET AL.	
	Examiner	Art Unit	
	Susan F. Rayyan	2167	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 26 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-36 are pending.
2. Information Disclosure Statement filed on February 26, 2002 has been considered.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-2,17-30,33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias et al (US 5,121,494) and Isobe et al. (US 6,469,751).**

As per claims 1, 24-28, 33,35 Dias teaches:

measuring a plurality of execution times to complete the database command at (subtasks, col. 3, lines 26-27) and col.8, lines 47-53.

Dias does not explicitly teach recording the measured execution times, thereby creating a time historical record, and using the time historical record to estimate the time required to execute the database command however Isobe does teach these limitations at (fig. 15A:log, col.20, lines 59-62). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the cited references to issue a command according to the issue schedule based on the database at col. 5, lines 16-18.

As per claims 2,29,34,36 same as claim arguments above and Isobe teaches: wherein said using the time historical record includes analyzing the time historical record by using a statistical analysis technique to estimate the time required to execute the database command at fig. 6 and ref. no. SB2 and col.4, lines 29-42.

As per claim 17-18,30 same as claim arguments above and Isobe teaches: further comprising recording within the time historical record the time of execution of said measured database utility command at (fig.5, time).

As per claim 19 same as claim arguments above and Isobe teaches: further comprising recording within the time historical record the day of execution of said measured database utility command at (fig.15a, day).

As per claim 20 same as claim arguments above and Isobe teaches: further comprising recording within the time historical record a database utility command option executed with said measured database utility command at fig. 15a.

As per claim 21-22 same as claim arguments above and Isobe teaches: further comprising recording within the time historical record a processor load and storage load of a computer executing said measured database utility command at fig.9.

As per claim 23 same as claim arguments above and Isobe teaches: wherein using the time historical record further comprises selecting a historical record for analysis based upon one or more of the following: the day that the previously executed instance of the database utility command was executed at col.4, lines 28-42.

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5. Claims 3-9,12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias et al (US 5,121,494) and Isobe et al. (US 6,469,751) in view of “Method of Sharing an Intelligent Progress Bar Across Remote Machine”, (IBM: 1994, herein after Sharing).

As per claim 3 same as claim arguments above and Dias and Isobe do not explicitly teach computing an average however Sharing teaches wherein said analyzing the time historical record includes computing an average execution time based upon information concerning the database command from the time historical record at paragraph 4, lines 9-10. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the cited references to predict the amount of execution time needed at paragraph 2, lines 3-4.

As per claim 4 same as claim arguments above and Sharing teaches: wherein the average execution time is $AvT = \frac{\sum M(i)}{N}$, where i is an integer and varies from 1 to N , N equals the number of measurements recorded in the historical record of the execution time of the database command, and $M(i)$ is an i th measurement of the execution time of the database command at paragraph 4, lines 9-10.

As per claim 5-6 same as claim arguments above and Dias and Isobe do not explicitly teach computing a moving range between prior measurements of the database command, based upon information from the time historical record. Sharing teaches analyzing the time historical record includes computing an average execution time

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based upon information concerning the database command from the time historical record at paragraph 4, lines 9-10. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the cited references to predict the amount of execution time needed at paragraph 2, lines 3-4. Sharing does not explicitly teach moving range however it would be obvious to one of ordinary skill in the art to include a moving range as an additional statistical calculation to further improve prediction and to schedule tasks appropriately.

As per claim 7-9,12-14 same as claim arguments above and Dias and Isobe do not explicitly teach wherein said analyzing the time historical record includes computing a maximum execution time or minimum time however Sharing teaches wherein said analyzing the time historical record includes computing an average execution time based upon information concerning the database command from the time historical record at paragraph 4, lines 9-10. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the cited references to predict the amount of execution time needed at paragraph 2, lines 3-4. Sharing does not teach minimum and maximum however it would be obvious to one of ordinary skill in the art to include a minimum and maximum as an additional statistical calculation to further improve prediction and to schedule tasks appropriately.

As per claim 10,15 same as claim arguments above and Isobe teaches executing the database command, measuring a time to execute the database command, and issuing a warning ... at fig.13, ref. nos. SF4-SF5.

As per claim 11,16 same as claim arguments above and Isobe teaches: wherein the warning is a warning that a configuration of the database may have changed at fig.13, ref, no. SF4-SF5.

6. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dias et al (US 5,121,494) and Isobe et al. (US 6,469,751) in view of “Method of Sharing an Intelligent Progress Bar Across Remote Machine” (IBM: 1994, herein after Sharing) and further in view of LAM et al (Pub. No. US 2003/0131146).

As per claim 32 same as claim arguments above and Dias, Isobe and Sharing do not explicitly teach a user interface module configured for enabling a user to specify the database command to be analyzed however Lam does teach this limitation at paragraph 10 lines 6-9. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the cited references to select a command to be executed (paragraph 10, line 10.

Response to Arguments

7. Applicant's arguments filed October 20, 2004 have been fully considered but they are not persuasive.

Regarding Applicant's argument that Dias et al. (US 5,121,494) does not teach measuring a plurality of execution times to complete the database command Examiner respectfully disagrees. Dias teaches this limitation at col.3, lines 26-28 and at col. 8, lines 47-53. Dias teaches measuring a plurality of execution times to complete the database command in a manner similar to the Applicant's claimed language, Dias measures the execution times of the subtasks to determine if a join could become unbalanced and if so subtask estimation are recalculated.

Regarding Applicant's argument that Isobe et al (US 6,469,751) does not teach measuring a plurality of execution times to complete the database. Examiner notes Isobe was relied upon to teach a time historical record.

Conclusion

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Rayyan whose telephone number is (571) 272-4117. The examiner can normally be reached M-F: 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for Official communications, (703) 746-7238 for After Final communications and (703) 746-7240 for Status inquiries and draft communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

Susan Rayyan


March 10, 2005


Primary Examiner